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Cronometer Software, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ESHA RESEARCH, INC., now known as **TRUSTWELL**,

Plaintiff,

vs.

CRONOMETER SOFTWARE, INC., formerly known as **BIGCRUNCH CONSULTING, LTD.,** and **DOES 1-20**,

Defendants.

No. 3:24-cv-01586-AB

REPLY IN SUPPORT OF CRONOMETER SOFTWARE, INC.'S MOTION TO AMEND THE STIPULATED PROTECTIVE ORDER

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REPLY

Trustwell's response ignores all of the arguments made in Cronometer's Opening Brief and instead aims to impugn Mr. Davidson's credibility. Trustwell's allegations are off base and irrelevant.

Indeed, in 2024, Trustwell sent a baseless cease-and-desist letter asking that Cronometer "surrender" the databases. Cronometer did not remove the data from its systems at that time because it had no obligation to do so. However, it immediately removed the ability for users to select Trustwell food items when using the Cronometer app.

Earlier this year, Cronometer terminated any license agreement it had with Trustwell and searched its systems for all Trustwell data, which it deleted from its systems. However, pursuant to its obligations in this case, Mr. Davidson forwarded the only copy of the database it could locate—a copy that Trustwell sent in 2022—to its counsel for preservation in this case. Counsel submitted those files to the Court. (ECFs 22, 25, Ex. 11.)

Cronometer has also preserved a couple of historical data backups of its systems (including food/nutrition data) pursuant to its evidence preservation obligations.

None of this gets to the question whether original authors and recipients (including Trustwell's now-former employees) should be able to see their own documents, and Trustwell has offered no reason why they should not, contrary to an abundance of case law from around the country. Trustwell's solution of relying on the procedure in the protective order is insufficient for the reasons described in the Opening Brief. (ECF 28, p. 3.) Moreover, Trustwell has already shown a propensity of overdesignating documents as Attorneys' Eyes Only though they contain no confidential information whatsoever. (*Compare* ECF 22 & 25, Ex. 10 (Interrogatory Response designated "AEO") with ECF 31 ¶ 3 (conceding it is not even "confidential").)

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CONCLUSION

The Court should grant the motion, and should allow original authors and recipients to see their own documents, regardless how they are designated.

Dated this 10th day of April, 2025.

Respectfully submitted,

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